

**ASSEMBLY BILL**

**No. 773**

---

**Introduced by Assembly Member Lieu**

February 26, 2009

---

An act to amend Sections 1424 and 1424.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 773, as introduced, Lieu. Health facilities: fines.

Under existing law, the Long-Term, Health, Safety, and Security Act of 1973; the State Department of Public Health administers various requirements pertaining to long-term health care facilities. Violation of these provisions is punishable by various classes of administrative citations with corresponding administrative penalties. A class "B" citation is subject to a civil penalty in an amount not less than \$100 and not exceeding \$1,000 for each and every citation. A class "AA" citation at a skilled nursing facility is subject to a civil penalty in an amount not less than \$25,000 and not exceeding \$100,000 for each and every citation, and a class "A" citation in a skilled nursing facility is subject to a civil penalty in an amount not less than \$2,000 and not exceeding \$20,000 for each and every citation.

This bill would increase the fine for a class "B" citation at a long-term health care facility to an amount not less than \$1,000 and not more than \$5,000 for each citation. The bill would also increase the fine for a class "AA" citation at a skilled nursing facility to an amount not less than \$50,000 and not more than \$125,000 for each citation, and the fine for a class "A" citation at a skilled nursing facility to an amount not less than \$5,000 and not more than \$50,000 for each citation.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Senior citizens represent a large portion of California's  
4 population; they include our aging mothers, fathers, grandparents,  
5 siblings, friends, and other loved ones. It is our responsibility as  
6 a state to ensure the highest quality of life and care for our seniors  
7 during their golden years.

8 (b) On September 29, 2008, the United States Department of  
9 Health and Human Services Office of Inspector General released  
10 a report entitled "Trends in Nursing Home Deficiencies and  
11 Complaints." In the report, the Inspector General found that 99.1  
12 percent of California nursing homes were cited over the past three  
13 years with deficiencies, a rate that is higher than the national  
14 average. The report makes it clear that improved quality of care  
15 for nursing home residents must be a priority.

16 (c) While adequate advocacy and representation is important  
17 to all California seniors, it is especially important for those who  
18 reside in a care facility. Many seniors in care facilities are  
19 particularly vulnerable because they have no friends or family who  
20 visit or advocate for them. The mission of the State Ombudsman  
21 Program is to investigate elder abuse and other complaints on  
22 behalf of the 250,000 California residents living in skilled nursing  
23 facilities. In 2008, state funding was reduced from this vital  
24 program, leaving many residents without resources to report abuse,  
25 fraud, or neglect.

26 (d) It is imperative that we continuously strive to improve  
27 nursing home care in California. As our population of aging  
28 residents increases, delinquency rates in nursing facilities become  
29 more frequent, and budget constraints limit advocacy programs,  
30 it is necessary to ensure the highest quality care and service to our  
31 state's most vulnerable population.

32 SEC. 2. Section 1424 of the Health and Safety Code is amended  
33 to read:

1 1424. Citations issued pursuant to this chapter shall be  
2 classified according to the nature of the violation and shall indicate  
3 the classification on the face thereof.

4 (a) In determining the amount of the civil penalty, all relevant  
5 facts shall be considered, including, but not limited to, the  
6 following:

7 (1) The probability and severity of the risk that the violation  
8 presents to the patient's or resident's mental and physical condition.

9 (2) The patient's or resident's medical condition.

10 (3) The patient's or resident's mental condition and his or her  
11 history of mental disability or disorder.

12 (4) The good faith efforts exercised by the facility to prevent  
13 the violation from occurring.

14 (5) The licensee's history of compliance with regulations.

15 (b) Relevant facts considered by the department in determining  
16 the amount of the civil penalty shall be documented by the  
17 department on an attachment to the citation and available in the  
18 public record. This requirement shall not preclude the department  
19 or a facility from introducing facts not listed on the citation to  
20 support or challenge the amount of the civil penalty in any  
21 proceeding set forth in Section 1428.

22 (c) Class "AA" violations are violations that meet the criteria  
23 for a class "A" violation and that the state department determines  
24 to have been a direct proximate cause of death of a patient or  
25 resident of a long-term health care facility. Except as provided in  
26 Section 1424.5, a class "AA" citation is subject to a civil penalty  
27 in the amount of not less than five thousand dollars (\$5,000) and  
28 not exceeding twenty-five thousand dollars (\$25,000) for each  
29 citation. In any action to enforce a citation issued under this  
30 subdivision, the ~~state~~ department shall prove all of the following:

31 (1) The violation was a direct proximate cause of death of a  
32 patient or resident.

33 (2) The death resulted from an occurrence of a nature that the  
34 regulation was designed to prevent.

35 (3) The patient or resident suffering the death was among the  
36 class of persons for whose protection the regulation was adopted.

37 If the ~~state~~ department meets this burden of proof, the licensee  
38 shall have the burden of proving that the licensee did what might  
39 reasonably be expected of a long-term health care facility licensee,  
40 acting under similar circumstances, to comply with the regulation.

1 If the licensee sustains this burden, then the citation shall be  
2 dismissed.

3 Except as provided in Section 1424.5, for each class “AA”  
4 citation within a 12-month period that has become final, the ~~state~~  
5 department shall consider the suspension or revocation of the  
6 facility’s license in accordance with Section 1294. For a third or  
7 subsequent class “AA” citation in a facility within that 12-month  
8 period that has been sustained following a citation review  
9 conference, the ~~state~~ department shall commence action to suspend  
10 or revoke the facility’s license in accordance with Section 1294.

11 (d) Class “A” violations are violations which the ~~state~~  
12 department determines present either (1) imminent danger that  
13 death or serious harm to the patients or residents of the long-term  
14 health care facility would result therefrom, or (2) substantial  
15 probability that death or serious physical harm to patients or  
16 residents of the long-term health care facility would result  
17 therefrom. A physical condition or one or more practices, means,  
18 methods, or operations in use in a long-term health care facility  
19 may constitute a class “A” violation. The condition or practice  
20 constituting a class “A” violation shall be abated or eliminated  
21 immediately, unless a fixed period of time, as determined by the  
22 ~~state~~ department, is required for correction. Except as provided in  
23 Section 1424.5, a class “A” citation is subject to a civil penalty in  
24 an amount not less than one thousand dollars (\$1,000) and not  
25 exceeding ten thousand dollars (\$10,000) for each and every  
26 citation.

27 If the ~~state~~ department establishes that a violation occurred, the  
28 licensee shall have the burden of proving that the licensee did what  
29 might reasonably be expected of a long-term health care facility  
30 licensee, acting under similar circumstances, to comply with the  
31 regulation. If the licensee sustains this burden, then the citation  
32 shall be dismissed.

33 (e) Class “B” violations are violations that the ~~state~~ department  
34 determines have a direct or immediate relationship to the health,  
35 safety, or security of long-term health care facility patients or  
36 residents, other than class “AA” or “A” violations. Unless  
37 otherwise determined by the ~~state~~ department to be a class “A”  
38 violation pursuant to this chapter and rules and regulations adopted  
39 pursuant thereto, any violation of a patient’s rights as set forth in  
40 Sections 72527 and 73523 of Title 22 of the California Code of

1 Regulations, that is determined by the ~~state~~ department to cause  
2 or under circumstances likely to cause significant humiliation,  
3 indignity, anxiety, or other emotional trauma to a patient is a class  
4 “B” violation. A class “B” citation is subject to a civil penalty in  
5 an amount not less than ~~one hundred dollars (\$100)~~ *one thousand*  
6 *dollars (\$1,000)* and not exceeding ~~one thousand dollars (\$1,000)~~  
7 *five thousand dollars (\$5,000)* for each and every citation. A class  
8 “B” citation shall specify the time within which the violation is  
9 required to be corrected. If the ~~state~~ department establishes that a  
10 violation occurred, the licensee shall have the burden of proving  
11 that the licensee did what might reasonably be expected of a  
12 long-term health care facility licensee, acting under similar  
13 circumstances, to comply with the regulation. If the licensee  
14 sustains this burden, then the citation shall be dismissed.

15 In the event of any citation under this paragraph, if the ~~state~~  
16 department establishes that a violation occurred, the licensee shall  
17 have the burden of proving that the licensee did what might  
18 reasonably be expected of a long-term health care facility licensee,  
19 acting under similar circumstances, to comply with the regulation.  
20 If the licensee sustains this burden, then the citation shall be  
21 dismissed.

22 (f) (1) Any willful material falsification or willful material  
23 omission in the health record of a patient of a long-term health  
24 care facility is a violation.

25 (2) “Willful material falsification,” as used in this section, means  
26 any entry in the patient health care record pertaining to the  
27 administration of medication, or treatments ordered for the patient,  
28 or pertaining to services for the prevention or treatment of  
29 decubitus ulcers or contractures, or pertaining to tests and  
30 measurements of vital signs, or notations of input and output of  
31 fluids, that was made with the knowledge that the records falsely  
32 reflect the condition of the resident or the care or services provided.

33 (3) “Willful material omission,” as used in this section, means  
34 the willful failure to record any untoward event that has affected  
35 the health, safety, or security of the specific patient, and that was  
36 omitted with the knowledge that the records falsely reflect the  
37 condition of the resident or the care or services provided.

38 (g) Except as provided in subdivision (a) of Section 1425.5, a  
39 violation of subdivision (f) may result in a civil penalty not to

1 exceed ten thousand dollars (\$10,000), as specified in paragraphs  
2 (1) to (3), inclusive.

3 (1) The willful material falsification or willful material omission  
4 is subject to a civil penalty of not less than two thousand five  
5 hundred dollars (\$2,500) or more than ten thousand dollars  
6 (\$10,000) in instances where the health care record is relied upon  
7 by a health care professional to the detriment of a patient by  
8 affecting the administration of medications or treatments, the  
9 issuance of orders, or the development of plans of care. In all other  
10 cases, violations of this subdivision are subject to a civil penalty  
11 not exceeding two thousand five hundred dollars (\$2,500).

12 (2) Where the penalty assessed is one thousand dollars (\$1,000)  
13 or less, the violation shall be issued and enforced, except as  
14 provided in this subdivision, in the same manner as a class “B”  
15 violation, and shall include the right of appeal as specified in  
16 Section 1428. Where the assessed penalty is in excess of one  
17 thousand dollars (\$1,000), or for skilled nursing facilities or  
18 intermediate care facilities as specified in paragraphs (1) and (2)  
19 of subdivision (a) of Section 1418, in excess of two thousand  
20 dollars (\$2,000), the violation shall be issued and enforced, except  
21 as provided in this subdivision, in the same manner as a class “A”  
22 violation, and shall include the right of appeal as specified in  
23 Section 1428.

24 Nothing in this section shall be construed as a change in previous  
25 law enacted by Chapter 11 of the Statutes of 1985 relative to this  
26 paragraph, but merely as a clarification of existing law.

27 (3) Nothing in this subdivision shall preclude the—state  
28 department from issuing a class “A” or class “B” citation for any  
29 violation that meets the requirements for that citation, regardless  
30 of whether the violation also constitutes a violation of this  
31 subdivision. However, no single act, omission, or occurrence may  
32 be cited both as a class “A” or class “B” violation and as a violation  
33 of this subdivision.

34 (h) Where the licensee has failed to post the notices as required  
35 by Section 9718 of the Welfare and Institutions Code in the manner  
36 required under Section 1422.6, the—state department shall assess  
37 the licensee a civil penalty in the amount of one hundred dollars  
38 (\$100) for each day the failure to post the notices continues. Where  
39 the total penalty assessed is less than two thousand dollars (\$2,000),  
40 the violation shall be issued and enforced in the same manner as

1 a class “B” violation, and shall include the right of appeal as  
2 specified in Section 1428. Where the assessed penalty is equal to  
3 or in excess of two thousand dollars (\$2,000), the violation shall  
4 be issued and enforced in the same manner as a class “A” violation  
5 and shall include the right of appeal as specified in Section 1428.  
6 Any fines collected pursuant to this subdivision shall be used to  
7 fund the costs incurred by the California Department of Aging in  
8 producing and posting the posters.

9 (i) The director shall prescribe procedures for the issuance of a  
10 notice of violation with respect to violations having only a minimal  
11 relationship to patient safety or health.

12 (j) The department shall provide a copy of all citations issued  
13 under this section to the affected residents whose treatment was  
14 the basis for the issuance of the citation, to the affected residents’  
15 designated family member or representative of each of the  
16 residents, and to the complainant if the citation was issued as a  
17 result of a complaint.

18 (k) Nothing in this section is intended to change existing  
19 statutory or regulatory requirements governing the ability of a  
20 licensee to contest a citation pursuant to Section 1428.

21 ~~(l)~~

22 (l) The department shall ensure that district office activities  
23 performed under Sections 1419 to 1424, inclusive, are consistent  
24 with the requirements of these sections and all applicable laws and  
25 regulations. To ensure the integrity of these activities, the  
26 department shall establish a statewide process for the collection  
27 of postsurvey evaluations from affected facilities.

28 SEC. 3. Section 1424.5 of the Health and Safety Code is  
29 amended to read:

30 1424.5. (a) In lieu of the fines specified in subdivisions (c),  
31 (d), and (e) of Section 1424, fines imposed on skilled nursing  
32 facilities or intermediate care facilities, as specified in paragraphs  
33 (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

34 (1) A class “AA” citation is subject to a civil penalty in an  
35 amount not less than ~~twenty-five thousand dollars (\$25,000)~~ *fifty*  
36 *thousand dollars (\$50,000)* and not exceeding ~~one hundred~~  
37 ~~thousand dollars (\$100,000)~~ *one hundred twenty-five thousand*  
38 *dollars (\$125,000)* for each and every citation. For a second or  
39 subsequent class “AA” citation in a skilled nursing facility or  
40 intermediate care facility within a 24-month period that has been

1 sustained following a citation review conference, or where the  
2 licensee has chosen not to exercise its right to a citation review  
3 conference, the state department shall commence action to suspend  
4 or revoke the facility's license in accordance with Section 1294.

5 (2) A class "A" citation is subject to a civil penalty in an amount  
6 not less than ~~two thousand dollars (\$2,000)~~ *five thousand dollars*  
7 *(\$5,000)* and not exceeding ~~twenty thousand dollars (\$20,000)~~ *fifty*  
8 *thousand dollars (\$50,000)* for each and every citation.

9 (3) Any "willful material falsification" or "willful material  
10 omission," as those terms are defined in subdivision (f) of Section  
11 1424, in the health record of a resident is subject to a civil penalty  
12 in an amount not less than two thousand dollars (\$2,000) and not  
13 exceeding twenty thousand dollars (\$20,000) for each and every  
14 citation.

15 (b) A licensee may, in lieu of contesting a class "AA" or class  
16 "A" citation pursuant to Section 1428, transmit to the state  
17 department, the minimum amount specified by law, or 65 percent  
18 of the amount specified in the citation, whichever is greater, for  
19 each violation, within 30 business days after the issuance of the  
20 citation.